

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.8691 of 1993

with

SPECIAL CIVIL APPLICATION No.10271 of 1993

**

For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

YES

2. To be referred to the Reporter or not?

YES

3. Whether Their Lordships wish to see the fair copy of the judgement?

NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

NO

5. Whether it is to be circulated to the Civil Judge?

NO

SCA 8691/93

ALEMBIC GLASS KARMACHARI UNION

Versus

ALEMBIC GLASS INDUSTRIES LTD

Appearance:

1. Special Civil Application No. 8691 of 1993

HL PATEL ADVOCATES for Petitioner

MR KS NANAVATI for Respondent No. 1

NOTICE SERVED for Respondent No. 2

2. Special Civil Application No 10271 of 1993

MR KS NANAVATI for Petitioner

MR NR SHAHANI for Respondent No. 1

NOTICE SERVED for Respondent No. 2

Shri D.A. Bambhania, for respondent no.3.

CORAM : MR.JUSTICE R.A.MEHTA

Date of decision: 16/03/98

COMMON ORAL JUDGEMENT :

Alembic Glass Industries Limited, respondent no.1, had transferred its glass undertaking to Dharak Limited, respondent no.2, and terminated the services of all its workmen.

2. That dispute was referred to the Industrial Tribunal, Vadodara ("The Tribunal" for brevity). In the writ petition filed by the workmen, by the High Court order, another demand (issue) was also referred as to "whether the decision to retrench all the workmen from 1.8.1987 was mala fide or not." The first demand referred was whether the retrenchment on transfer of the undertaking under sec.25(FF) of Industrial Disputes Act, 1947 ("the Act" for brevity) was legal or not and whether the workmen should be reinstated in service with back wages.

3. The Tribunal, by its judgment and award dated 10.5.1993, held that the mass termination on transfer was legal and the transfer was not mala fide; and directed that the workmen, except those who have voluntarily accepted termination and accepted compensation and other terminal benefits, others should be paid gratuity and compensation at the rate of 90 days wages (inclusive of bonus) for every completed year of service.

4. The learned counsel for the workmen has submitted that the management had applied for permission to retrench under section 25N of the Act and that permission was refused and on the very next day the undertaking was transferred and services of all the workmen have been terminated. It is also pointed out that the contentions raised by the workmen have not been given any consideration. The award, in generously spaced typing, runs into only 13 pages. Upto half of the judgment it is the narration of statement of claim, etc. Para 8 of the award deals with names and exhibit numbers of witnesses and suddenly in the following para, (i.e. para no.9,) conclusion is drawn on the basis of oral evidence. In para 10, it is stated that the Tribunal has read depositions of all the witnesses verbatim and has referred in the judgment wherever necessary. However, at no place deposition of any witness is mentioned. It is further mentioned that in this case the record of 1000 pages, numerous documents and evidences have been produced; oral arguments were lasted for five days; High Court and Supreme Court decisions have been referred to and they have been dealt with in one sentence without any citation that any citation is not applicable in this

reference! The Tribunal has further observed that for lack of time detailed appreciation of evidence and citation is not possible! In the next four pages without reference to any document or any citation the Tribunal has come to the conclusion that the transfer of management is in accordance with the provisions of section 25(FF) of the Act and transfer is not mala fide.

5. All this cursory consideration by the Tribunal is grossly unsatisfactory. It is no reason that for want of time, appreciation of evidence and consideration of citations is not possible. When substantial question of law and facts have been raised, number of witnesses have been examined, large number of documents are produced, the record runs into 1000 pages and the parties have argued the matter for five days, the judgment and consideration by the Tribunal is thoroughly lacking in consideration of all this. The judgment and award of the Tribunal is totally unsatisfactory. It is impossible for this Court to undertake extensive exercise which the trial court has to, having regard to the extent of the material on record.

6. It is indeed unfortunate that impugned termination of 1987 is not receiving adjudication in 1998 at the hands of the High Court. However, having regard to the extensive material, it would not be proper for the High Court to undertake the exercise and the matter has to be remanded back to the Industrial Tribunal.

7. The company has also filed a cross petition against the award of 90 days wages for every completed year of service. Since the matter is being remanded these questions will also be considered again by the Tribunal. However, there would not be any recovery from the workmen for the amounts paid to them by virtue of the award of the Tribunal, which is now being set aside at the instance of the workmen. Such question shall not arise till a fresh decision by the Tribunal.

8. In the result both these petitions are allowed and the judgment and award of the Tribunal is set aside and the matter is remanded back to the Tribunal for a fresh decision and award in accordance with law. The Tribunal shall give utmost priority to this matter since it is very old matter concerning large number of workmen. The Tribunal shall see that the matter is heard and disposed very expeditiously by holding day by day hearing, preferably within the period three months from today and latest by 31st July 1998.

9. Rule is made absolute in above terms. No order
as to costs.

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